

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 ALLIANTGROUP, LP § CASE NO. 4:16-CV-3114
§ HOUSTON, TEXAS
5 VERSUS § FRIDAY,
§ MAY 4, 2018
6 BRAD MOLS, ET AL § 10:01 A.M. TO 10:34 A.M.

7
8 MOTIONS HEARING

9 BEFORE THE HONORABLE NANCY K. JOHNSON
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 FOR THE PARTIES: SEE NEXT PAGE
13 COURT RECORDER: DESIREE SILLAS
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1 HOUSTON, TEXAS; FRIDAY, MAY 4, 2018; 10:01 A.M.

2 THE COURT: All right, we're here in Alliantgroup
3 versus Brad Mols. Who's here for Plaintiff?

4 MR. SIMMONS: Matt Simmons here on behalf of
5 Plaintiff, along with Counsel Adam Perkins and General
6 Counsel John Simpson.

7 THE COURT: Okay, Mr. Humphrey?

8 MR. HUMPHREY: Yes, Brian Humphrey for the
9 Defendant, Your Honor.

10 THE COURT: Now, Mr. Humphrey, before we begin
11 talking about spoliation, I do want to conduct an in camera
12 review on those attorney/client documents.

13 MR. HUMPHREY: Okay, Your Honor.

14 THE COURT: So, I'm assuming you have them at your
15 office?

16 MR. HUMPHREY: Yes.

17 THE COURT: All right. So, I want you to be back
18 with those documents, let's say at 1:30. Will that work?

19 MR. HUMPHREY: Yeah, Your Honor.

20 THE COURT: And we'll go over those. All right,
21 so I'll look at those.

22 Frankly, Mr. Humphrey, that was one of the worst
23 privilege logs I've ever seen. And that's the reason I'm
24 looking at it.

25 I've done a lot of looking at privilege logs

1 lately. It's the latest thing. So I am going to look
2 because your privilege log was entirely insufficient.

3 So taking that off the table then, let's talk
4 about the spoliation. What I'm concerned about is it looks
5 like Mr. Mols, through Mr. Humphrey, is saying that he got a
6 new phone in July of '17.

7 MR. HUMPHREY: Or August.

8 THE COURT: August.

9 MR. HUMPHREY: Around the time, Your Honor.

10 THE COURT: And nothing was saved prior to that.

11 MR. HUMPHREY: Well, Your Honor, he got the new
12 phone. Everything was transferred to the new phone, but
13 before that, the phone was set, as an iPhone can be, to not
14 save things beyond 30 days. And he didn't realize that that
15 was the case.

16 THE COURT: Okay. So my question is: This
17 lawsuit was filed in 2016. He had a duty to preserve that
18 arose upon the time of his service of this lawsuit. And
19 what efforts did he make to preserve evidence at that time?

20 MR. HUMPHREY: Your Honor, he did not understand
21 that an iPhone would delete after 30 days the way it was
22 set -- his text messages.

23 THE COURT: Not good enough. I mean, that's just
24 not good enough. That a year goes by, he has a duty to
25 preserve and, you know, he took no effort to, you know,

1 preserve anything predating service of the lawsuit.

2 MR. HUMPHREY: I would agree that he should have
3 done that, Your Honor. But that said, this is -- I think
4 it's an honest mistake. This is a man who is not a
5 technically inclined person. And there's no evidence here
6 that there was anything there that was relevant; anything in
7 here that's incriminating.

8 THE COURT: We don't know. That's the problem, we
9 don't know. It's just gone.

10 MR. HUMPHREY: Your Honor, if there's a smoking
11 gun in there, there would be a smoking gun in all the other
12 documents they've got here. They know all the people he's
13 talked to. What could there possibly be that would break
14 open this case?

15 THE COURT: This is what I'm concerned about,
16 Mr. Humphrey -- and I think that your client is possibly,
17 you know, is falling into the willfully ignorant category,
18 which is not the good category to be in.

19 Because if he gets served with a lawsuit sometime
20 after June 30, 2016 when the lawsuit was filed, he's got a
21 duty to preserve from that day going back as well as
22 forward. And for him to act like I had no idea and there's
23 so many things missing, that's a problem.

24 It's just a problem, you know, because either you
25 didn't take care of this by advising him you need to

1 preserve or he's just not paying attention. But no one
2 knows what was there because it's gone, right?

3 MR. HUMPHREY: That's what happens when evidence
4 gets lost, Your Honor. I understand that. And that does
5 not, by itself, justify any sort of sanctions let alone a
6 spoliation instruction or death penalty sanctions.

7 And I understand that we all wish those text
8 messages were here -- were still here. Brian Mols wishes
9 they were still here. He tried to get them. Because based
10 on all the evidence in this case, there wouldn't be anything
11 in there.

12 I mean, Alliantgroup has had this case for a year,
13 they could have talked to the CPAs. They already subpoenaed
14 all the emails from his former employer. He had no control
15 over those. They produced them after he left working there.
16 They have no reason to hide anything.

17 And in all of that, they've got nothing. They've
18 showed that they've got nothing. And somehow it's this --
19 these text messages, one medium, is where all the
20 incriminating stuff is.

21 That just doesn't make any sense, Your Honor.

22 THE COURT: Well there's also missing information
23 from the laptop, correct?

24 MR. SIMMONS: Absolutely, Your Honor. Now we
25 weren't able to -- the prior order didn't specify to search

1 for deletion of the laptop or prior scan disk.

2 THE COURT: So are you asking for that?

3 MR. SIMMONS: Absolutely, Your Honor.

4 THE COURT: All right, you've got it.

5 MR. SIMMONS: I think that that's something that
6 we absolutely need and Mr. Humphreys wasn't willing to give
7 because it wasn't specific in the Order.

8 THE COURT: Well, you've got it now. You may
9 search for deletions.

10 MR. SIMMONS: Thank you. In addition to that,
11 it's troubling that he's trying to cure his spoliation and
12 his perjury through more testimony that he didn't do
13 anything wrong.

14 This has been their theory all along. You've
15 already admonished them for this that we don't have to
16 produce these documents because we didn't do anything wrong.

17 You told them that's not going to sit well in a
18 trade secrets case where you are the Defendant. Now they're
19 saying well you're not prejudice my group because even if
20 the documents weren't destroyed, they wouldn't have mattered
21 because we didn't do anything wrong.

22 THE COURT: So how long will it take for you to
23 have your expert look at the computers -- the hard drive --
24 to see what was deleted and when?

25 MR. SIMMONS: The deletion and -- additionally we

1 only have three devices. It would -- I would be shocked if
2 he didn't also have tons of thumb drives that was tucked
3 into it and taken out of that laptop.

4 So, that report can also be done by the expert. I
5 believe that would take two weeks for us to go through. I
6 think that's reasonable to go through all of that data to
7 find deletions, see if there's even deleted documents that
8 can be recovered.

9 In addition to that, the prior laptop -- what we
10 found on the laptop, Mr. Humphreys and Mr. Mols said was
11 never there -- never there.

12 To you, to our responses, we had detailed
13 breakdowns of the accounting, what CPAs it came from, and it
14 showed that Mols wasn't getting 30 percent, he was getting
15 60 percent of this company's profit that he just so happened
16 to work for, his subordinate, who left on the same day as
17 him.

18 This whole shell game that Mols has played has
19 cost Alliantgroup -- just Alliantgroup going after these
20 third parties in California that Mols says he didn't have
21 access to the documents even though he was getting a
22 majority of the profit, cost the Alliantgroup \$170,000 just
23 to get those 11,000 pages that we got.

24 And even in those 11,000 pages, half of them are
25 client-specific items, meaning they are client records.

1 They're client tax documents. They're client employee lists
2 -- things that they used to build these tax studies.

3 So the remainder of them have, you know, already
4 been produced or -- but there's still huge holes. So
5 there's this program called "Sales Force." I'm sure every
6 sales company has it.

7 Sales Force was not produced at all by the Prime
8 Parakore people, even though almost every email Brad Mols
9 says: Hey, send this to Sales Force, send this to Sales
10 Force. Those were never produced. And that's where they
11 keep track of all the client names, just like Alliantgroup
12 does.

13 You know, when the entries were made, what the
14 entry said, that is specifically what we think that they
15 took from us -- one of the many things.

16 There's not a single text message that has ever
17 been produced of Brad Mols ever, other than the ones that we
18 just got from his phone.

19 There's not a single text message in this Prime
20 production. Both Lewicki and Torres and Prime and Parakore
21 swore an affidavit that they produced all text messages that
22 were responsive to the subpoena -- every single one of them.
23 They produced none because Lewicki broke his phone three
24 times, Torres broke her phone two times, then lost the
25 number. Seems like Mols has the same story.

1 There's no metadata in any of the documents that
2 we've received -- none. There's no forms or templates other
3 than beginning of drafting the website which Mols did
4 immediately after he left Alliantgroup, even though he was
5 just a contractor, right?

6 There's no discussion of Mols starting the
7 company. And one of the more troubling things that I got
8 from the 11,000 pages from Prime and seeing Mr. Mols'
9 declaration saying: I've produced all of my relevant
10 Gmails. I've got 14 additional Gmails that Prime produced
11 of Brad Mols' Gmails that Brad Mols did not produce.

12 Brad Mols only produced four total emails in his
13 entire production -- four. Now I've got here 14 additional
14 Bradmuls@Gmail.com emails that he did not produce even
15 though he swears in this recent declaration, their response
16 to our dec motion: I looked through all my Gmails. I
17 didn't destroy any of them. And I produced all of them.

18 I've got 14 additional ones here and this likely
19 isn't even a complete production either. Because the only
20 ways these Prime people get these Gmail emails is they get
21 sent to them. So all the Gmails that he just sent to
22 clients -- just sent to -- maybe Torres' Gmail. Those are
23 no where to be found.

24 And that is the time frame that we really need to
25 focus on because he admits in these text messages up until

1 August of 2016 he may have used his Gmail. So -- and he's
2 only produced four emails and only, I guess, three of them
3 are Gmails.

4 And he's saying: Oh well, during that time I
5 really wasn't working that much. I've got 14 additional
6 ones here that he never produced, that we never had access
7 to. Him communicating with clients, him communicating with
8 Torres and Lewicki about clients, and he still says: I
9 produced everything. I produced everything.

10 And so along that line, in addition to the search
11 for deletion, I think it's appropriate to search his
12 Gmail -- with the same search terms the Court has already
13 approved for the same information.

14 We'll see what else he destroyed. Maybe he didn't
15 destroy some things, but likely he did. Not just his Gmail,
16 but also his new company Confers (phonetic) that email, to
17 see what else -- same search terms -- to see what else he
18 has because Mr. Humphreys only focuses on this is a 12-month
19 non-solicitation case.

20 But this is so much more than a 12 month non-
21 solicitation case. This is misappropriation of trade
22 secrets case. And we haven't gotten any metadata. We
23 haven't gotten anything from his Converse email.

24 THE COURT: What would that show? Your best day,
25 what's it going to show?

1 MR. SIMMONS: It's going to show his usage of
2 Alliantgroup documents in his business. Because if he
3 stole --

4 THE COURT: And how will you prove that?

5 MR. SIMMONS: We prove that by metadata in the
6 particular document he said he uses in conference because it
7 should be assigned to an authorized user or we can match it
8 up with our own documents like we have on one document that
9 he has produced.

10 So there's a calendar entry in June of 2016 -- I
11 actually have it here -- where the client information that
12 is written down is the exact same as the client information
13 written down in Alliantgroup's records.

14 They used this in a calendar entry for a client
15 call. That is a direct evidence of a trade secret
16 misappropriation. And I guarantee there is a plethora of
17 those that were either spoliated or will be in Coverse's
18 records.

19 I mean, other than that, we don't have anything to
20 go on. We're with the Plaintiff in the case. He held all
21 the documents. And he destroyed all the documents.

22 THE COURT: All right, so you want to search his
23 Gmail?

24 MR. SIMMONS: Yes, ma'am.

25 THE COURT: Using the same search terms?

1 MR. SIMMONS: Yes, ma'am.

2 THE COURT: And you want to search the Converse
3 account?

4 MR. SIMMONS: Yes, ma'am.

5 THE COURT: You want to do a forensic examination
6 on the hard drive?

7 MR. SIMMONS: On all the electronic devices that
8 we have, the three.

9 THE COURT: You want to search for metadata?

10 MR. SIMMONS: Yes, ma'am.

11 THE COURT: Anything else?

12 MR. SIMMONS: One the things that Your Honor
13 pointed out during the last hearing is: We found additional
14 information that -- as again, he said he's produced
15 everything. There was nothing in there.

16 THE COURT: That's right.

17 MR. SIMMONS: There's a plethora of documents that
18 he said were never there, he never kept, or he produced
19 everything. And we found them. I guess, he didn't have a
20 chance to spoliage everything -- and including text
21 messages, there's accounting records, everything. And the
22 Court said: I'll shift the cost.

23 So the cost of the forensic exam, the attorney's
24 fees and reviewing, producing, all that stuff ended up being
25 \$58,000 -- \$58,562.

1 THE COURT: How much was the forensic examination
2 by itself?

3 MR. SIMMONS: Just the cost from the vendor was
4 \$10,608.50.

5 THE COURT: All right. And when you're talking
6 about your attorneys fees, was this fees seeking the
7 documents or fees reviewing documents once you got them from
8 the vendor?

9 MR. SIMMONS: So reviewing the documents,
10 producing the documents, and the (indiscernible) motion.
11 Those are the three things. So, not even seeking was
12 included in that \$58,000.

13 Now seeking them and everything, that comes to a
14 complete combined total of -- I believe it was -- I want to
15 believe -- I have it written down. So it's \$58,562, plus
16 all the motions to get to these documents, all the motions
17 to compel against Mols and everything -- just Mols was
18 76,559 in addition to the 58,562.

19 I'm not good at math right now, but those --

20 THE COURT: No lawyer is.

21 MR. SIMMONS: And then additionally, like I said
22 before, since he's playing the shell game of: I didn't have
23 access to these documents, these people are in charge of
24 them, and you know I was just an independent contractor of
25 that company, it took Alliantgroup over \$170,000 just to get

1 the documents from the company that he got the majority of
2 the profit from.

3 THE COURT: So, you got those documents in
4 proceedings in California?

5 MR. SIMMONS: We got them actually, pursuant to
6 your Lewicki Order. They said: Okay we'll produce
7 everything even if it's a duplicate. Clearly they didn't
8 produce everything, but they went ahead and swore under oath
9 -- I have a copy of that -- that they produced everything in
10 response to our subpoena. They have no texts, they have no
11 templates, they have none of the other gaps -- they have no
12 Sales Force.

13 All the other gaps that I noted in their
14 production that Mols had access to that he didn't preserve
15 because he was playing this game that, hey, I'm just an
16 independent contractor, I don't really have access to these
17 documents. But he's getting the majority of the profit.

18 And so by playing that game, it forced
19 Alliantgroup to spend an additional 170,000-plus to get the
20 documents because he didn't preserve them because he was
21 playing games with his real position at that company.

22 THE COURT: Okay. Interesting.

23 Your response.

24 MR. HUMPHREY: Where to begin? First off, there's
25 no shell game here. I think the text messages show that

1 Mols was begging Prime for money. How does he control a
2 company he's begging them for money? He's begging them to
3 give him the emails so that he can produce them.

4 I mean, where -- just because he's getting a
5 portion of the profits, does not make him a controller of
6 the company. I don't know what else we can do about that.
7 He's -- we've got testimony of everybody involved saying the
8 same thing.

9 Yet because he gets some profits, somehow he's
10 responsible for everything that Prime does, everything that
11 Angela Torres does, everything Daniel Lewicki does. And
12 other than all the evidence being contrary to that, what
13 else can I say to it?

14 MR. SIMMONS: So all the -- sorry.

15 MR. HUMPHREY: I didn't interrupt you.

16 MR. SIMMONS: I thought he was done with his
17 point.

18 THE COURT: All right. Go ahead.

19 MR. HUMPHREY: So we point that out in our
20 response. I don't know what else we can possibly say about
21 this other than point to all the deposition testimony, the
22 contract he has with them, and the simple fact that from
23 their own exhibits that he obviously doesn't have control
24 over it or he wouldn't have to ask for and beg for money.

25 I mean what else -- if he controlled that company

1 then why doesn't he find cash group today and not her. That
2 doesn't make any sense.

3 So, with regard to their claim for attorney fees,
4 you know, first off, I haven't seen any of these emails that
5 he's pointing to that he says weren't produced. I don't
6 know whether their responsive to a request. I know we
7 objected to many of them. We talked about some of the
8 objections.

9 My client searched based on, you know, the request
10 and our objections to them. So I can't respond to whether
11 they were responsive or why they weren't produced here
12 because I didn't see these emails yet.

13 THE COURT: But what, I mean, in this text message
14 he says, "You and Dan keep Prime. You know how much it
15 pains me to give Prime up."

16 MR. HUMPHREY: Okay, he wasn't working with Prime
17 any more. He felt like he was part of the company because
18 he was working with it, but that doesn't mean that he has
19 control over them, Your Honor. It really doesn't.

20 Can we actually make one person responsible for
21 the preservation of documents by a non-party based on that
22 text message?

23 THE COURT: We're talking about his own
24 preservation, much less crime. This is the problem that
25 I've got and I am going to allow you to search the Gmail.

1 You can search the Converse accounts and look for metadata
2 to see if there's any stealing of Alliant documents.

3 You can do a forensic examination on the three
4 electronic devices to determine deletions. You may search
5 for metadata. Show that I am shifting costs -- I am going
6 to just at the outset grant you the 10,000- -- what is it,
7 608 dollars and some-odd cents for the forensic examination
8 because I said I'd do that because there's clearly things
9 that that examination brought up that are relevant to this.

10 I am going to hold off on any other attorney's
11 fees and I will take that up at the time of trial.

12 Let's talk about trial for a minute. You've got a
13 Motion for Summary Judgment.

14 MR. HUMPHREY: Correct, Your Honor.

15 THE COURT: This is a bench trial and so I think
16 it's going to be more efficient for it because there are so
17 many disputed facts. There's no way I can do a summary
18 judgment without fully understanding what the facts are.

19 So, you're summary judgment will be carried along
20 with the case. And I just -- I'm going to have to hear
21 everyone's sad story about what happened. I think that
22 that's the most efficient way to deal with it.

23 I know you want to get out on legal issues, your
24 client did nothing wrong, okay. But I need to know what he
25 did in the first place before I make any determinations

1 because right now it's highly disputed what's going on.

2 MR. HUMPHREY: And Your Honor, right now I've got
3 a Plaintiff who has not yet disclosed a dollar's worth of
4 damages in this case that has --

5 THE COURT: And that's the best thing you've got
6 going for you.

7 MR. HUMPHREY: I think I've got more than that.
8 They can't even identify a single trade secret they even
9 believe was taken that's an actual trade secret. They know
10 all of the people that he contacted because they've got a
11 list of all of them from Prime.

12 And they haven't even identified any of his
13 former clients.

14 THE COURT: Okay, and your client did not turn
15 over -- hasn't preserved any documents so they're at a lost
16 to prove things.

17 So, you know, he can't sit back, not preserve
18 evidence, not do anything and act like well you can't pin it
19 on me because I didn't preserve anything. I'm not playing
20 fair. He's not playing by the rules. We know he's not. He
21 has a duty to preserve, and he didn't.

22 Now how that all shakes out. How many tears I see
23 from the witness stand on how believable that is, I don't
24 know. But right now, you know, I've just got affidavits.
25 I've heard you talk for the last year and a half, or two

1 years, about he has no control, he has nothing. And then I
2 see these emails and it seems like that seems a little
3 inconsistent with independent contractor at the mercy of
4 Angela Torres who's pulling all the strings.

5 Kind of doesn't look, in some of these emails,
6 like Angela Torres is the big boss. And I'm just saying
7 that because that's the impression that I get from those
8 emails. Maybe he can explain that, put a different gloss on
9 it about how she's controlling everything and he's just an
10 independent contractor at her mercy.

11 But, you know, there's no way I can, you know,
12 look at your summary judgment without hearing a trial. I'm
13 going to have to ride out of it anyway on a bench trial so I
14 might as well just have a trial. Sounds like super fun.

15 MR. SIMMONS: You know, I wish it wasn't this way
16 either, Your Honor. I wish we had the documents and we
17 could win on summary judgment, but it's --

18 THE COURT: You know and the problem on your side
19 generally -- and I don't know what you've got -- but I've
20 seen a lot of these cases and that is you have employees who
21 do things like this, but you really can't monetize that.
22 You can't, and so you've got a great, maybe, liability case,
23 but your damages, you know, are mushy.

24 MR. SIMMONS: At a minimum we have the
25 disgorgement of the money he earned, which is already

1 \$170,000. We've got other damages that we can prove through
2 testimony, but I understand your point, Your Honor.

3 On the Order for the search of the devices, I just
4 want to clarify that that also includes a search for other
5 devices that were plugged into it, whether it be hard
6 drives, thumb drives, or whatever.

7 THE COURT: If you can identify that, yes.

8 MR. SIMMONS: Okay.

9 THE COURT: If he's got other thumb drives and
10 that kind of thing, that's -- I'm over the age of 15, so
11 that is a little vague to me how it all works, but.

12 MR. SIMMONS: And then a deadline for Mr. Mols
13 providing us access or our vendor access to his Gmail,
14 Converse email, as well as his Converse documents to see if,
15 you know, because obviously for his new company I'm sure he
16 started over from complete scratch, too, and already made it
17 into a multi-million company.

18 So if we can have a deadline for Mols' production
19 to our forensic vendor.

20 THE COURT: Two weeks.

21 MR. SIMMONS: Two weeks.

22 THE COURT: Two weeks. He's got two weeks to pay
23 you the 10,608-dollars-and-change, whatever that is.

24 Let's look for a trial date.

25 MR. SIMMONS: So just to be clear, he has two

1 weeks to produce the --

2 THE COURT: Devices to your --

3 MR. SIMMONS: -- devices and activation. And then
4 we'll have another probably two weeks to run the forensics,
5 review it.

6 THE COURT: Sure.

7 MR. SIMMONS: Okay.

8 MR. HUMPHREY: I thought they'd already taken
9 forensic images of the devices. They need the devices
10 again?

11 MR. SIMMONS: We have the devices again. But we
12 already have the devices, so the only thing that would need
13 to be produced is the account or the accounts of all the
14 Converse accounts, the -- his Gmail account and passwords,
15 so that the forensic examiner can go in there.

16 THE COURT: Okay.

17 MR. HUMPHREY: Okay.

18 MR. SIMMONS: And also look for deletions. I just
19 want to be clear --

20 THE COURT: Yeah, you're looking for deletions.
21 Yeah.

22 MR. SIMMONS: -- the examiner can look for that,
23 too.

24 THE COURT: Yeah, that's fine.

25 So how long do you think your case will be?

1 MR. SIMMONS: I would think, I mean, four to six
2 days.

3 THE COURT: How about you?

4 MR. HUMPHREY: In response to that, probably need
5 another two or three, but --

6 THE COURT: I was thinking this would be about a
7 two-week trial?

8 MR. HUMPHREY: Sounds like it, Your Honor.

9 THE COURT: Okay, then what are we looking at?
10 Maybe July, August, September?

11 MR. SIMMONS: September looks great for me.

12 MR. HUMPHREY: Fine with me. Works for me, too,
13 Your Honor.

14 THE COURT: September. Shannon, what am I doing
15 in September?

16 COURTROOM CLERK: Which week do you want me to
17 look?

18 THE COURT: Just start at Labor Day. Okay, so I'm
19 free the week of Labor Day and then the next week?

20 COURTROOM CLERK: (Indiscernible).

21 THE COURT: Okay, the week of the 17th.

22 COURTROOM CLERK: You're also available that week,
23 too.

24 THE COURT: Okay

25 COURTROOM CLERK: And the next week --

1 THE COURT: All right, it looks like I'm free in
2 September. So, -- and I think we've got some flexibility
3 being a bench trial, so if something comes up on a day, you
4 know, we can not have trial.

5 Do you want to look at your calendars or do you
6 want to commit now?

7 MR. SIMMONS: I think we can commit now.

8 THE COURT: Okay.

9 MR. SIMMONS: This is obviously a priority.

10 MR. HUMPHREY: Judge, I have a September 17 trial
11 in State Court. This would take priority over that.

12 THE COURT: Will they agree with that, maybe?

13 MR. HUMPHREY: We'll find out before then.

14 THE COURT: You could get this case resolved
15 before that, too.

16 MR. HUMPHREY: Got an offer on the table, Your
17 Honor.

18 MR. SIMMONS: Wow.

19 THE COURT: All right. So well then, let's just
20 start this the day after Labor Day and we'll book out two
21 weeks. Yeah, the 4th through the 14th. That's nine trial
22 days.

23 And Janet, block out the 16th on that Monday,
24 just --

25 COURTROOM CLERK: The 16th is a Sunday.

1 THE COURT: Oh, the 16th is a Sunday, you're
2 right. The 17th then.

3 COURTROOM CLERK: Through the 17th, okay.

4 THE COURT: And see where we go.

5 All right, anything else we need to talk about?

6 I'll see you at 1:30 with your document.

7 MR. SIMMONS: I don't need to be there for that
8 1:30 hearing, correct?

9 THE COURT: No, no. Correct.

10 MR. SIMMONS: Okay, I appreciate your time, Your
11 Honor and your considerations.

12 THE COURT: Well, I'm sorry we've all come to
13 this. I don't like to sanction people, but you're entitled
14 to that examiner fee. I may give other fees on not for your
15 looking at the documents because if he had turned them over
16 initially you would be looking at them anyway.

17 But all the effort you've had to go to find these
18 documents, that'll be something I'd take up at trial, so.

19 MR. SIMMONS: Thank you, Your Honor.

20 THE COURT: So, anything else we need to talk
21 about?

22 MR. HUMPHREY: Nope.

23 THE COURT: Your pretrial order then, let's give
24 that date.

25 Final pretrial order due August 24 and that will

1 also include your proposed Finding of Facts and Conclusions
2 of Law.

3 MR. SIMMONS: And then since like we'd hamstring
4 by the spoliation issue, just put that as a general
5 overtone?

6 Thank you, Your Honor.

7 THE COURT: Absolutely. Absolutely.

8 Good. All right. You-all have a good day.

9 MR. SIMMONS: Thank you, Your Honor.

10 (Proceeding adjourned at 10:33 a.m.)

11 * * * * *

12 I certify that the foregoing is a correct
13 transcript to the best of my ability produced from the
14 electronic sound recording of the proceedings in the above-
15 entitled matter.

16 /S/ MARY D. HENRY

17 CERTIFIED BY THE AMERICAN ASSOCIATION OF

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20 JTT TRANSCRIPT #58665

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